

No. 12880

Supreme Court of Illinois

Guyer

vs.

Murphy

71641  7

John Murphy
Plff in Error

vs
Le de Grey
Def't in Error

In the Supreme Court
April Term 1858

And the said Plaintiffs
comes and says that in the above
proceedings and in the rendition
of judgment in this cause many
great injury hath intervened to
the injury of the Plaintiffs of as
if present of errors shows the
following

1. The Court below should have quashed the complaint
2. The Court below erred in permitting or allowing the case
to be read in evidence to the jury
3. The Court below erred in admitting improper evidence
on the part of the Plaintiffs below
4. The Court erred in excluding ^{proper} evidence offered
by the Plaintiffs in error.
5. The Court below erred in giving improper instructions
on the part of Grey.
6. The Court below erred in refusing proper in-
structions asked by the Defendant below,
7. The verdict is against law
8. The verdict is against the weight of evidence
9. The evidence does not sustain the complaint
10. Court ^{below} erred in permitting Lewis A Hall
to be examined as a witness
11. The Court below erred in refusing to grant
a new trial
12. The Court below had no jurisdiction to try
the cause

And the Plaintiffs
supplement may be removed set aside and
renewed situation

Pleas before the Circuit Court within and for the County of Peoria in the State of Illinois on the 16th day of March in the year of our Lord one thousand eight hundred and fifty eight.

Be it Remembered that heretofore to wit on the 6th day of November A D 1857 there was filed in the office of the Clerk of the Circuit Court in and for the County of Peoria in the State of Illinois, a Summons, Transcript and appeal Bond which are in the words and figures following to wit:

(Summons)

x State of Illinois
Peoria County ss

The People of the State of Illinois to the Sheriff or any Constable of said County Greeting:
Whereas George E. Carson Agent of Lazarus L. Guyer has this day Complained on his oath against John Murphy and says that he was in possession of a certain ^{estate of} freehold in the following described premises to wit: a part of Lot Number Five (5) in Block Number Seven (7) in the old town now City of Peoria in the State & County aforesaid Commencing Twenty five feet from the corner of Main and Adams Street thence on a line with Main Street towards the Illinois River Twenty Four feet thence running back on line's parallel with Adams Street Seventy Two (72) feet being Twenty Four (24) feet on Main Street by Seven & two (72) deep together with the Two Story brick building and the appurtenances situate thereon with the exception of the Store room in said building which was then occupied as a Jewellers Shop. and that he leased the

same to John Murphy aforesaid on the first day of April 1856 for the term one year from the said first day of April 1856. That said lease has expired, and he the said Murphy still holds over.

You are therefore hereby commanded to summon the said John Murphy so complained of, to appear before me at my office in Georgia on the 29th day of October A.D. 1857. at 10 o'clock Am to answer unto the said Guyer in an action of forcible detainer. and hereof make due service and return as the law directs

Given under my hand and seal this 22nd day of October. A.D. 1857. Bernard Bailey J. C. ~~Seal~~

Endorsement

(Endorsed)
Served on John Murphy by reading this writ to him this 24th day of Oct 1857 Geo. W. Campbell. Const.
(Transcript)

Lutgereth L. Guyer
vs
John Murphy

Justices Costs
Bath & Precept Jⁿ 75
Jury warrant 25
Docketing Suit 12
One Sub & Swearing Wit 25
Swearing Jury 75
Trial per day 2.00
Ent Judgment 25
Making Copy, Proceedings &c 2.00
6.37

Geo W Campbell Const
Ser & Writing Precept 50
Do Do 3 Sub 75
Do Jury warrant 2.00
Jury fees pd by plft 3.00

Forcible Detainer - Affidavit and Precept issued on the 22nd Day of October A.D. 1857 returned on the 29th at 1 o'clock Pm and returned by Geo W. Campbell Const served by reading to the defendant on the 24th. Jury warrant issued on the 24th and returned by said Campbell with the following names jurors C. S. Doty John Wise Cyrinius Dornier J. Hester, C. S. Barber D. G. Stevenson, C. Titmer B. Wilson, J. R. Smith, C. S. Mosier John Dremen and Valentine Durwin. Subpoenas issued for Hall William Stettenius and Mrs Gray and returned by said Campbell served on the 29th. On the return day the plaintiff appeared by his attorney the defendant made default. The above named jurors were regularly empannelled and sworn and after hearing the proofs and allegations of the plaintiff retired, after deliberation returned into court with the following verdict. "We the Jury find the defendant guilty as charged of "Forcible Detaining" the premises

described in the Complaint. It is therefore ordered and adjudged that the plaintiff recover possession of said premises and the defendant pay the costs of suit. The defendant on the 29th demanded an appeal to the Circuit Court.

State of Illinois
Peoria County

I, Bernard Bailey one of the acting justices of the peace in and for said County do hereby certify that the above is a true and correct transcript of the docket kept by me in the above entitled Cause. Given under my hand and seal this 29th day of October A.D. 1857.

Bernard Bailey J.P. *Seal*

(Bond)

Know all Men by these Presents, That We John Murphy & Henry Grove are held and firmly bound unto Lazarus L. Guyer in the penal sum of Five hundred Dollars, lawful money of the United States; for the payment of which, well and truly to be made we bind ourselves, our heirs and administrators, jointly, severally, and firmly, by these presents. Witness our hands and seals, this third day of November A.D. 1857.

The Condition of the above obligation is such, That whereas, the said Lazarus L. Guyer did on the 29th day of November 1857 before Bernard Bailey a Justice of the Peace for the County of Peoria recover a judgment in a certain action of forcible detainer against the above bounden John Murphy for the sum of ten 69/100 Dollars; costs & for restitution of the premises in Complaint described from which judgment the said John Murphy has taken an appeal to the Circuit Court of the County of Peoria aforesaid, and State of Illinois: Now if the said John Murphy shall prosecute his appeal with effect and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said appeal and pay all rents becoming due from the commencement of the suit until the final determination thereof then the above obligation to be void, otherwise to remain in full force and effect.

Approved before me, at my office, this 3rd day of November 1857

Bernard Bailey J.P.

J. Murphy *Seal*
H. Grove *Seal*

And thereupon on the 6th day of November A D 1857 the Clerk of said Court issued out of said Court under the seal thereof a summons in the above entitled cause directed to the Sheriff of Peoria County to serve which with the Sheriffs return thereon endorsed is in words & figures following to wit:

The People of the State of Illinois, To The Sheriff of Peoria County—
 Greeting: We Command you to Summon Lazarus L. Guyer if he may be found in your County to appear before our Circuit Court on the first day of the term thereof, to be held at Peoria, within and for the said County of Peoria, on the third Monday of November instant then and there, in our said Court, to prosecute his suit against John Murphy, lately brought into our said Court by appeal from the Judgment of Bernard Bailey one of the justices of the peace of said County and make return of this writ with an endorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid.

Witness Enoch P. Sloan, Clerk of our said Court, and the seal thereof, at Peoria, this sixth day of November in the year of our Lord one thousand eight hundred and fifty seven Enoch P. Sloan Clerk. P. Co.

Served on the within named Lazarus L. Guyer by reading to him this writ Nov 13th 1857. F. W. Smith Off by J. F. Dawson Deft

And thereupon to wit on the 30th day of November A D. 1857 the plaintiff filed in the Clerks office of said Court his motion to dismiss the appeal, which is in the words and figures following to wit:

motion to L. L. Guyer vs John Murphy
 Peoria County Circuit Court
 November Term 1857
 Forcible Detainer.

Appeal by Deft.

Plaintiff moves to dismiss the appeal in this case because the appeal was not taken in time as required by Statute—
 Because the appeal bond was not filed and appeal claimed until the seventh day after the verdict and judgement against deft—
 By his atty
 E. G. Johnson

Proceedings in the Circuit Court at a term thereof began and held in the Courthouse in the City and County of Peoria, in and for said County and State of Illinois on the third Monday of November in the year of our Lord one thousand eight hundred and fifty seven, it being the sixteenth day of said month. Present the Honorable Elihu N. Powell, Judge of the 16th judicial Circuit in the State of Illinois— Francis W. Smith, Sheriff, and Enoch P. Sloan, Clerk to wit:—

Tuesday, December 15th AD 1857

Lazarus L. Guyer

vs

Appeal from J. P.

John Murphy

By order of Court this Cause is continued

And afterwards to wit on the 12th day of February AD 1858 there was filed in the Clerks office of said Court a bill of complaint in the above cause in words & figures following to wit;

Bill of
Complaint

"State of Illinois ss
Peoria County ss

To Bernard Bailly Esq. One of the Justices of the Peace in and for said County— The Complaint of George C. Carson agent of Lazarus L. Guyer of the County aforesaid respectfully sheweth—

That on the first day of April AD. 1856. and long before that time the said Lazarus L. Guyer was possessed of an Estate of freehold in and to the following described premises to wit: a part of Lot Number Five (5) in Block Number Seven (7) in the old town— Now City of Peoria in the State & County aforesaid Commencing twenty five feet from the Corner of Main and Adams Streets thence on a line with Main Street towards the Illinois river twenty four feet. thence running back on line parallel with Adams Street Seventy two feet. Being twenty four feet front on Main Street by Seventy two feet deep together with the two story brick building and the appurtenances situate thereon with the exception of the front Store room in said building which was then occupied as a Jewellers Shop— That on the first day of April aforesaid the said Lazarus L. Guyer leased the premises aforesaid by written lease of that date to one John Murphy for during and until the expiration of one year from the date thereof— That the said one year has long since elapsed

yet the said John Murphy wrongfully and willfully holds over,
detains and occupies the premises aforesaid after the expiration
of his said lease, and refuses to deliver up possession of the
same after demand made in writing for the possession thereof
against the form of the Statute in such case made and provided

Subscribed and
Sworn to before me
this 22nd day of October
A.D. 1857

Bernard Bailey J.P.

George E. Carson

George E. Carson

Also on the same day there was filed in the office of the Clerk of said
Court a notice in the above cause, which with the endorsement thereon
is in the words and figures following to wit:

notice to
quit

" To John Murphy - Sir

You are hereby notified that I demand
possession of the premises leased by me to you by written lease,
dated the first day of April A.D. 1856. for during and until the
expiration of one year from the date thereof - and described as
follows to wit - a part of Lot No. five in Block No Seven in
the old town, now City of Peoria in the State of Illinois - beginning
twenty five feet from the corner of Main & Adams Streets thence
on a line with Main Street towards the Illinois river twenty
four feet. thence running back on lines parallel with Adams
Street. Seventy two feet, being ^{twenty four} feet on Main Street
by seventy two feet deep. together with the two story brick building
situated thereon except the front store room now occupied by
Lewis Hall as a Jewellers Shop - which premises you now
wrongfully, and willfully hold over and occupy after the determin-
-ation of said lease. The bearer is authorised to receive
possession of the same - Lazarus L. Guyer

Served the within notice on John Murphy by leaving a copy
of the same with him this 17th day of Oct 1857.

Geo W. Campbell Const

And afterwards to wit on the 16th day of March A.D. 1858 there was filed in the Clerk's office of said Court a lease which is in the words and figures following to wit:

Lease

This indenture made the first day of April 1853 between Lazarus L. Guyer of Brimfield Peoria County of the first part and John Murphy of Peoria, Peoria Co of the second part witnesseth, that the said party of the first part, has demised and leased to the said party of the second part all those premises situate lying and being in the City of Peoria County of Peoria and State of Illinois known and described as follows, to wit; that part of the two story brick house situate on lot five (5) block seven (7) original town of Peoria, which has been occupied by the said party of the second part for the last two years, to have and to hold the said above described premises with the appurtenances unto the said party of the second part from the first day of April 1853 three until the first day of April 1854 four, and the said party of the second part, in consideration of the leasing of the premises aforesaid by the said party of the first part to the said party of the second part does covenant and agree with the said party of the first part, to pay the said party of the first part as rent for the said demised premises the sum of one hundred and forty four dollars, in twelve equal payments at the expiration of each month, and the said party of the second part further agrees that at the expiration of the term in this lease mentioned, he will yield up said premises to said party of the first part in as good condition as when the same were entered on by said party of the second part, less by fire inevitable accidents & ordinary wear excepted

L. L. Guyer

John Murphy

The portion of the premises mentioned in the above lease does not include the storeroom occupied by Devin & brother.

John Murphy
L. L. Guyer

L. L. Guyer hereby agrees to continue the lease of the premises described in the above indenture to John Murphy for the term of another year, that is up to the first day of April 1855, the said Murphy agreeing to pay the said Guyer as rent for said premises the sum of fourteen dollars per month.

Peoria April 1. 1854.

L. L. Guyer
John Murphy

And thereupon on the same day the defendant entered in the Clerk's office of said Court his motion to quash complaint in this cause which is in the words and figures following to wit

motion to
quash complaint

Guyer

vs

Murphy

In the Circuit Court

The defendant enters a Motion to quash the Complaint in this Cause because the same is uncertain & insufficient
Grove for deft

Proceedings at a term of the Circuit Court began and held in the Court house in the City of Peoria, and for the County of Peoria, and State of Illinois, on the first Monday of March in the year of our Lord one thousand eight hundred and fifty eight it being the first day of said Month. Present Honorable Edwin N. Powell, Judge of the sixteenth judicial circuit in said State. Francis W. Smith Sheriff and Enoch P. Sloan, Clerk, viz:—

Tuesday, March 16th A.D. 1858.

Lazarus L. Guyer

vs

John Murphy

Appeal from J.P. = Forcible Entry & detainer

This day came the said plaintiff by Johnson his attorney and the said defendant by Grove his attorney. The defendant by his attorney moves the Court to quash plaintiffs Complaint filed herein and the Court being fully advised in the premises does overrule said Motion. The parties being ready for trial it is ordered by the Court that a jury be empannelled to try the issues in this Cause whereupon came a jury of twelve good and lawful men to wit:— Seth Griffin, John W. Armstrong, Miles Bosworth, Matthew M. Reynolds, James Sloan, Charles Wescott, Thomas Cutter, A. O. Garrett, Chas Greenleaf, John Johnson, J. B. Warner and James F. Murden, who being duly chosen, tried and sworn to well and truly try the issues joined in this Cause and a true verdict give according to the evidence do say, That the jury do find the defendant guilty in manner and form as charged in the Complaint. Therefore it is considered that the said Lazarus L. Guyer have restitution of the premises in the

Complaint mentioned to wit: - a part of lot number five in block number seven in the old town, now City of Peoria in the State of Illinois commencing twenty five feet from the corner of Main and Adams Streets, thence on a line with Main street towards the Illinois river, twenty four feet, thence running back on lines parallel with Adams street seventy two feet, being twenty four feet front on Main street by seventy two feet deep together with the two story brick building and the appurtenances, situate thereon, with the exception of the front store room in said buildings and it is further considered that the said Lazarus L. Guyer have and recover of the said John Murphy his costs and charges by him about his suit in this behalf expended, in this Court as well as in the Court below, and that he have execution therefor - The defendant by his attorney enters a motion for a new trial of this cause. and the Court being fully advised in the premises does overrule said motion, whereupon the defendant by his attorney prayed an appeal to the Supreme Court of this State, which is allowed on his entering into bond to the plaintiff in the sum of one thousand dollars, conditioned according to law, with Henry Grove as security, and filing the same in the office of the Clerk of this Court in twenty days from this date.

And thereupon the defendant filed in the above cause his motion for a new trial which is in the words & figures following to wit:

Motion for
new trial

L. L. Guyer
vs
John Murphy

The defendant enters a motion for a new trial for the following reasons.

- 1 The Court erred in permitting the lease to go in evidence to the Jury -
- 2 The Court admitted improper evidence on the part of the Plaintiff
- 3 The Court refused proper evidence offered by the defendant
- 4 The Court gave improper instructions on part of Plff
- 5 The Court refused proper instructions asked by defendant

6. The verdict is against evidence
- 7 The verdict is against Law
- 7 The verdict should have been for the defendant
- 8 The Court erred in refusing to quash the Complaint
- 9 The evidence did not sustain the Complaint
- 10 The Court erred in permitting Plaintiff to examine Lewis Hall as a witness.
11. The Court has no Jurisdiction to try the Cause -

Grove for deft

And thereupon to wit on the 18th day of March A D 1858 there was filed in the Clerks of said Court an appeal Bond in said cause which is in the words & figures following to wit:

Appeal Bond

Know all men by these presents that we John Murphy and Henry Grove are held and stand firmly bound unto Lazarus L. Guyer in the penal sum of One Thousand dollars lawful Money of the United States to the payment of which well and truly to be made we bind ourselves our heirs executors administrators and assigns jointly severally and firmly by these presents sealed with our seals and dated at Peoria this nineteenth day of March A.D. 1858.

The Condition of the above obligation is such that whereas by the Consideration and Judgement of the Circuit Court of Peoria County at the March term A.D. 1858. in a certain action of forcible detainer the above named Lazarus L. Guyer recovered Judgement against the above bounden John Murphy for the recovery of the possession of the premises described in the Complaint filed in this Cause being part of Lot five in Block Seven in the City of Peoria beginning twenty five feet from the Corner of Main and Adams streets Thence on a line with Main street towards the Illinois river, twenty four feet Thence running back on lines parallel with Adams Street Seventy two feet being twenty four feet front on Main street by Seventy two feet deep

with the two story brick building and the appurtenances with the exception of the front store room in said building and also for the costs of suit from which Judgement the said John Murphy has prayed an appeal to the Supreme Court which has been allowed. Now if the said John Murphy shall duly prosecute said appeal and shall pay said Judgement and all costs rents interests and damages in case said Judgement shall be affirmed by the Supreme Court then this obligation to be void otherwise to remain in full force - John Murphy *Seal*
H. Grove *Seal*

And thereupon to wit on the same day there was filed in the clerks office of the said Court a bill of Exceptions in the above cause which is in the words & figures following to wit:

Lazarus L. Guyer

vs

John Murphy

In the Circuit Court

Be it remembered that the Plaintiff on the trial of this Cause to the Jury offered a Notice in evidence in words & figures following To which the defendant objected No question was made as to the proof of execution on the part of Guyer or that it was served on the defendant Oct 17. 1857.

To John Murphy - Sir

You are hereby notified that I demand possession of the premises leased by me to you by written lease, dated the first day of April A.D. 1856. for during and until the expiration of one year from the date thereof - and described as follows to wit - a part of Lot No. five in Block No seven in the old town, now City of Peoria in the State of Illinois beginning twenty five feet from the corner of Main & Adams Streets - thence on a line with Main Street towards the Illinois river twenty four feet. thence running back on lines parallel with Adams Street, seventy two feet, being twenty four feet on Main Street by seventy two feet deep. together with the two story brick building situated thereon except the front store room now occupied by Lewis Hall as a Jewellers shop which premises you now wrongfully and willfully hold over and occupy after the determination of said lease -

The bearer is authorised to receive possession of the same -
Lazarus L. Guyer
Served the within Notice on John Murphy by leaving a copy of
the same with him this 17th day of Oct 1857.
Geo. W. Campbell Const

But the Court overruled the objection and admitted the
notice in evidence. To which decision of the Court overruling
said objection & in admitting said Notice in evidence
the defendant at the time objected & excepted.

The plaintiff after having proved the execution thereof
offered the following lease in evidence -

This indenture made this first day of April 1856 six between
L. L. Guyer of Brimfield Peoria County & State of Illinois of the first
part, and John Murphy of said County and State of the second part
witnesseth, that the said party of the first part has demised and leased
to the said party of the second part all those premises situate and
lying in the City of Peoria and State of Illinois, known and described
as follows, to wit that part of the two story brick house situate on
lot five block seven Original town Now City of Peoria which
has been occupied by said Murphy for several years past, being
all the said building the front store room occupied by A. H. Hall
excepted, to have and to hold the above described premises with
the appurtenances unto the said party of the second part from
the first day of April 1856 to the first day of April 1857 seven
and the said party of the second part, in consideration of the
leasing of the premises aforesaid by the said party of the first
part to the said party of the second part does covenant and
agree with the first party as above to pay the said party of the
first part as rent for said premises the sum of two hundred
dollars per annum in twelve equal payments of sixteen dollars
and sixty six cents at the end of each month, and also the half of the taxes
falling due this year and the said party of the second part further
agrees that at the expiration of the time in this lease mentioned he
will yield up said premises to said party of the first part, in as good
condition as when same was entered on by said Murphy less by fire
inevitable accident and ordinary wear excepted. The interlineation
made before signing
Peoria April 1. 1856.
L. L. Guyer
John Murphy

To which the defendant objected But the Court overruled the objection and admitted the lease in evidence To which decision of the Court overruling said objection and in admitting the lease in evidence the defendant then and there at the time objected and excepted. The plaintiff then called Lewis Hall who being examined on the voir dire states that sometime in February he leased the whole premises of the plaintiff for a term of years, commencing April 1. 1857. That at the time of the execution of said lease, he was in possession of the shop part of said building, under a previous lease to Augustus H. Hall and that soon after he leased the whole premises he informed the defendant that he had leased the whole premises, That Murphy did not go out and Guyer did not deliver him possession under the lease and he had never occupied under the lease, and did not consider himself bound by said lease at this time.

The defendant then objected to the witness on the ground that the witness was interested in the result of the suit and in the possession of the premises but the Court overruled the objection and permitted the witness to testify as a witness To which decision of the Court overruling said objection and in permitting the witness to testify the defendant then & there at the time objected and excepted.

The witness then stated to the Jury that he leased the premises from Guyer. That sometime in the forepart April A.D. 1857 Witness told Murphy that witness had rented from Guyer and defendant asked Witness what he would ask per year for the part of the premises occupied by defendant and Witness said he would take three hundred & fifty dollars per

year. Defendant said he would pay that Witness then said that he wished to make some improvement on the front part of the store occupied by witness & Murphy then said he would not take then he said Guyer had used him badly. That the defendant occupied the Cellar Hall & upper part of the building & occupied all around the front lower room which witness occupied - That the Back yard was open and occupied by defendant used it if any body did - and that defendant still continued to occupy the said premises as before the lease to Witness up to the time of this trial.

The plaintiff then called Mr Stettenius who stated that in April 1856 Witness leased a house from the defendant for a year terminating April 7 1857 with a privilege of a longer Term. That the lease was for a year only -

That in February 1857 defendant said to witness that he must have the House as he defendant had got notice to leave the one he was in -

In March and after the 18 of March 1857 defendant told Witness that he defendant must leave the house he occupied as he had notice to quit which was the premises in question. The plaintiff then called Jacob Guyer who testified that the House occupied by defendant was on part of Lot five in Block Seven in the City of Peoria Commencing 25 feet from Corner of Main & Adams Street - then down Main 24 feet thence running back 42 feet thence toward Adams Street 24 feet thence to place of beginning and that the said defendant was in possession of the same excepting the shop room occupied by the said Lewis Hall.

The plaintiff here rested his Cause.

The defendant proved the execution of an order in words & figures following

Doctor John Murphy

Per Peas pay the Bearer James H. Forney
Nineteen dollars & Eighty five cents & charge to my account
\$ 19 85.

Yours Truly
L. L. Guyer

M^r Lewis Hall if Doctor Murphy is not in place pay
this order & I will be in a few days & settle it.
Brimfield, ^{May} 23/57 L. L. Guyer

And offered the same in evidence to which the plaintiff
objected but the Court overuled the objection & the order was
read in evidence to the Jury.

The Plaintiff then proved the execution of & offered in evidence
a lease executed by Plaintiff to defendant dated in 1853.
In words following;—

This indenture made the first day of April 1853 between
Sargurus L. Guyer of Brimfield Peoria County of the first part
and John Murphy of Peoria Peoria Co of the second part
witnesseth, that the said party of the first part, has demised and
leased to the said party of the second part all those premises
situate lying and being in the City of Peoria County of Peoria
and State of Illinois known and described as follows to wit:
that part of the two story brick house situate on lot five (5) block
seven (7) original town of Peoria, which has been occupied
by the said party of the second part for the last two years
to have and to hold the said above described premises with
the appurtenances unto the said party of the second part from
the first day of April 1853 three until the first day of
April 1854, four and the said party of the second part in
consideration of the leasing of the premises aforesaid by the
said party of the first part to the said party of the second part
does covenant and agree with the said party of the first part
to pay the said party of the first part as rent for the said
demised premises the sum of one hundred and forty four
dollars, in twelve equal payments at the expiration of each
month, and the said party of the second part further agrees
that at the expiration of the term in this lease mentioned
he will yield up said premises to said party of the first
part in as good condition as when the same were
entered on by said party of the second part, loss by fire
inevitable accidents & ordinary wear excepted.

L. L. Guyer
John Murphy

The portion of the premises mentioned in the above

lease does not include the store room occupied by Devin
& Brother

John Murphy
L. L. Guyer

L. L. Guyer hereby agrees to continue the lease of the premises described in the above indenture to John Murphy for the term of another year that is up to the first day of April 1855. The said Murphy agreeing to pay the said Guyer as rent for said premises the sum of fourteen dollars per month - Georgia April 1. 1854.

L. L. Guyer

John Murphy

To which the Plaintiff objected & the Court sustained the objection & excluded the evidence To which decision of the Court the defendant objected & excepted.

This was all the evidence in the case -

The plaintiff asked the following instructions.
Guyer vs Murphy & Instructions for Plaintiff
Forcible Detainer

1. If the jury find from the evidence that the relation of landlord and tenant existed between the plaintiff and defendant as to the premises described in the Complaint by a written lease and that the term specified in the lease had expired before the demand of possession and Notice to quit was made upon the defendant and that defendant held over said premises after the expiration of the lease forcibly and against the will and without the consent of the plaintiff the Jury will find for the plaintiff
2. If the defendant relies upon a new Contract express or implied after the expiration of the written lease the burden of proof rests upon him to prove such Contract and in the absence of proof tending to show such Contract express or implied the Jury will find for the Plaintiff in this case
3. Merely holding over for any time after expiration of a

written lease does not tend to prove a renewal of the contract unless the party holding over also shows some act of the lessor recognising said holding over as a renewal of the relation of landlord and tenant—

To the giving of which the defendant objected But the Court overruled the objection and gave the instructions as asked To which decision of the Court in overruling the defendant's objection and in giving said instructions the defendant then and there at the time objected and excepted The defendant then asked the following instruction

1 There is no evidence in the case tending to show that Guyer gave written notice to the defendant to leave the premises until October 17th 1857 and if the Jury believe from the evidence that Guyer leased the premises to the defendant from April 1 1856 until April 1857 and that Guyer permitted the defendant to hold over after April 1 1857 without objection on his part and received rent from defendant then the presumption of law is that the defendant may hold the premises for the year ending April 1 1858.

2. The order offered in evidence is proper for the Jury to consider as tending to show the payment of the amount there mentioned by the defendant and if the Jury believe that the order was given by Guyer the defendant has the right to have the same applied on the rent for the year commencing April 1 1857.

3 If the Jury believe from the evidence that the defendant paid rent to Guyer in May AD 1857. the verdict should be for the defendant

4 Loose Conversations that might have been held or took place between the defendant and third persons in relation to other houses are not evidence in this case that Guyer gave notice to Murphy to leave—

5 It is admitted that the defendant retained possession

of the premises in controversy until October 1857. and unless the plaintiff has proved that he gave notice to the defendant to quit on or about April 1 1857 the verdict should be for the defendant

- 6 The Jury should read the Complaint as well as the lease & if the premises described in the Complaint are different from those described in the lease the verdict should be for the defendant

But the Court refused to give instructions 2 & 4 & 5. and Modified instruction Number 2. by adding the words.

If the Jury shall believe from the evidence that the order was given for rent accruing after the first day of April 1857

To which decision of the Court in refusing to give instructions numbered 2, 4 & 5. as asked and in modifying instruction Number 2. The defendant then & there objected & excepted

The Jury found for the plaintiff

The defendant entered a Motion for a new trial in words following;

L. L. Guyer

vs

John Murphy

L. L. Guyer

The defendant enters a Motion for a new trial for the following reasons

- 1 The Court erred in permitting the lease to go in evidence to the Jury -
- 2 The Court admitted improper evidence on the part of the Plaintiff
- 3 The Court refused proper evidence offered by the defendant
- 4 The Court gave improper instructions on part of Plff

- 5 The Court refused proper instructions asked by defendant
- 6 The verdict is against evidence
- 7 The verdict is against Law.
- 7 The verdict should have been for the defendant.
- 8 The Court erred in refusing to quash the Complaint.
- 9 The evidence did not sustain the Complaint
- 10 The Court erred in permitting Plaintiff to examine Lewis Hall as a witness
- 11 The Court has no Jurisdiction to try the Cause

Grove for deft.

But the Court overruled said Motion & refused to grant a new trial. To which decision of the Court overruling the Motion and in refusing to grant a new trial the defendant then and there at the time objected & excepted & prayed that this his bill of exceptions might be signed & sealed in this Cause and made part of the record in this Cause which is done *

The Complainant Notice to quit lease made part of this case

E. N. Powell

Seal

Seal

State of Illinois }
 Peoria County } I, Enoch P. Sloan clerk of the Circuit Court in
 & for said County do hereby certify that the foregoing is a full and correct transcript
 of papers filed & of the proceedings of our said Court in a certain cause wherein
 L. L. Guyer is complainant & John Murphy is defendant, as the same remain
 on file & of Record in my office.

Given under my hand & the seal of said
 Court at my office in Peoria this
 tenth day of April 1858
 Enoch P. Sloan, clerk

John Murphy # 825
by #836

Le La Guyer

Filed April 20, 1888
L. Leland
C. K.